

Service Animals: A Legal Overview

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SERVICE ANIMALS: A LEGAL OVERVIEW

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SERVICE ANIMALS: A LEGAL OVERVIEW

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- All information provided is non-binding
- Ultra Reader's Digest Version

Current Law

- ADA definition of service animal
– Service animals are defined as dogs that are individually trained to do work or perform tasks for people with [provide assistance to an individual with a disability]

Current Law

–If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government

Current Law

- Beginning on March 15, 2011, only dogs [except in some cases miniature horses] are recognized as service animals under titles II and III of the ADA

Service Animals

- Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself
- Some examples include:



Service Animals

- Alerting persons with hearing impairments to sounds or intruders
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments



Service Animals

- Assisting persons with mobility impairments with balance
- Providing minimal protection or rescue work



Tasks

- Further examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties

Pets

- A service animal is not a pet
 - The ADA requires businesses to modify "no pets" policy to allow the use of a service animal by a person with a disability

Pets

- This does not mean that a business must abandon a "no pets" policy altogether but simply that it must make an exception to the general rule for service animals

Service Animals

- The work or task a dog has been trained to provide must be directly related to the person's disability
- Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA

Service Animals

- This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act

Service Animals

- The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go



Service Animals

- An individual with a service animal may not be segregated from other customers



Identifying Service Animals

- **What can be asked?**
 - If an entity is not certain that an animal is a service animal, it may ask the person who has the animal if it is a service animal required because of a disability
 - However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability

Identifying Service Animals

- Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal
- Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability

Following Local Codes

- If a local health code allows only admission of guide dogs for those who are deaf or blind, is a business or public entity protected if follows the local law?
- No

Following Local Codes

- If a business refuses to admit any other type of service animal on the basis of local health department regulations or other state or local laws, then there is a violation of the ADA
- The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations

Maintenance or Cleaning Fees

- Cannot charge
- Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets

Maintenance or Cleaning Fees

- However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages

Maintenance or Cleaning Fees

- For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage

Taxicabs

- Taxicab companies may not refuse to provide services to individuals with disabilities
- Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service

Exclusion of Unruly Animals

- A business may exclude any animal, including a service animal, from a facility when that animal's behavior poses a direct threat to the health or safety of others
- For example, any service animal that displays vicious behavior towards other guests or customers may be excluded

Exclusion of Unruly Animals

- A business may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals
 - Each situation must be considered individually

Exclusion of Unruly Animals

- Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises

Exclusion of a Disruptive Animal

- There may be a few circumstances when a public accommodation is not required to accommodate a service animal—that is, when doing so would result in a fundamental alteration to the nature of the business
- Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities

Exclusion of a Disruptive Animal

- But when it does, for example, when a dog barks during a movie, the animal can be excluded

Exclusion

- Allergies and fear of animals are generally not valid reasons for denying access or refusing service to people with service animals

Definition of Service Animal

- New regs. exclude
 - Wild animals (monkeys, others)
 - Reptiles
 - Rabbits
 - Farm animals
 - Ferrets
 - Amphibians
 - Rodents

Definition of Service Animal

- Regs. clearly state that
 - Animals whose primary function is to provide emotional support would not be service animals
 - The difference between a psychiatric service animal and an emotional support animal is the service provided

Definition of Service Animal

- A psychiatric service animal is trained to perform work or a task
- Emotional support animals' sole function is to provide comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being

Miniature Horses

- In addition to the provisions about service dogs, the DOJ's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities

Miniature Horses

- Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds

Miniature Horses

- Entities covered by the ADA must modify their policies to permit miniature horses where reasonable
 - The regulations set out 4 assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility

Miniature Horses

- The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and

Miniature Horses

- (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility

Reasons for Exclusion or Removal



- New regs. allow an entity to remove if
 - The animal is out of control and the animal's handler does not take effective action to control it or
 - The animal is not house broken or

Reasons for Exclusion or Removal



- The animal's presence causes a fundamental alteration of the service being provided or

Reasons for Exclusion or Removal



– The animal poses a direct threat to the health or safety of others that cannot be eliminated by a reasonable accommodation or modification

Exclusion

- Regs. state that
 - If an entity excludes an animal, it must give the individual with a disability the opportunity to benefit from or participate from the services without having the service animal on the premises

Exclusion

- The ADA excludes therapy or comfort animals as service animals
- The Fair Housing Act includes such animals as service animals

Owner's Responsibilities

- Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices
 - In that case, the individual must maintain control of the animal through voice, signal, or other effective controls

Entity's Rights



- The regs. clarify further that
 - An entity may ask if the animal is required because of a disability

Entity's Rights



- What work or tasks the animal has been trained to perform

State Law

- Section 21-7-4
- Right of person with a disability to be accompanied by service animal
- (b) Every person with a disability, including a person who is totally or partially blind, hearing-impaired, or diagnosed on the autism spectrum shall have the right to be accompanied by a service animal in any public place, including a public or private school, and

State Law

- ... any of the places listed in Section 21-7-3. The person may not be required to pay an extra charge for the service animal
- (d) A person training a service animal shall be entitled to the same privileges granted to a person with a disability pursuant to subsection (b)

State Law

f) This section does not relieve a person accompanied by a service animal from liability for any damages done to the premises or facilities by the service animal

Resources

- DOJ Guidance on Service Animals
 - Commonly Asked Questions about Service Animals in a Place of Business
 - ADA Business Brief: Service Animals
 - Regulations
 - Title II, III: 28 CFR Parts 35 and 36, respectively

Questions?